



January 19, 2018

FLORIDA
Executive
Director
Leon Biegalski

TAX: Sales and Use Tax

TAA NUMBER: 18A-002

ISSUE: Admissions

STATUTE CITE(S): Section(s) 212.04, and 212.02(1), F.S.

RULE CITE(S): Rule 12A-1.005(4)(d)2., F.A.C.

QUESTION: Are dues and fees paid by members exempt from sales tax as dues and fees paid for instructional classes?

ANSWER: Yes, members have access to the gym facilities only during the instructional class periods.

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Subject: Technical Assistance Advise ment (“TAA”)
TAA 18A-002
Sales and Use Tax-Admissions

Section(s) 212.02(1), and 212.04, Florida Statutes (“F.S.”)
Rule(s) 12A-1.005(4)(d)2., Florida Administrative Code (“F.A.C.”)

XXXXXX (“Taxpayer”)(“Owner”)(“Petitioner”)
Business Partner Number: XXXX
FEIN: XX-XXXXXXXX
XXXXXXX

Dear XXXX:

This letter is a response to your petition dated November 9, 2017, for the Department’s issuance of a Technical Assistance Advise ment (“TAA”) to Petitioner, regarding memberships. Your

Child Support – *Ann Coffin, Director* • General Tax Administration – *Maria Johnson, Director*
Property Tax Oversight – *Dr. Maurice Gogarty, Director* • Information Services – *Damu Kuttikrishnan, Director*

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petition has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Rule Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of section 213.22, F.S.

Facts

Taxpayer operates XXXXXX. Taxpayer sells memberships, drinks, and clothing. The memberships enable clients to attend XXXX classes. Your previous request provided that the gym facility is only available to members during class time. Taxpayer has several XXXXX in its gym facility that are used by members.

The request included copies of XXX proposed agreements which provide that the agreement entitles members to access Taxpayer's facilities and instructional services only during class time posted at Taxpayer's facility. The class includes instruction for a full-body workout that begins with warm-up stretching, followed by intervals of XXXXX and XXXXX calisthenics, and aerobics, and culminates with cool-down stretching.

Applicable Law and Response

Section 212.04(1), F.S., requires sales tax to be collected on the sales price or amounts received from the sale of admissions. Section 212.02(1), F.S., defines the term "Admissions." It provides, in part, the following:

(1) The term "admissions" means and includes the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation or for the privilege of entering or staying in any place of amusement, sport, or recreation, including, but not limited to, ... any place where charge is made by way of cover charges ... or other fees or receipts of anything of value measured on an admission or entrance or length of stay ... in any place where there is any ... sport, or recreation, **and all dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities**, including, but not limited to ... athletic, exercise, and fitness facilities (*Emphasis added*)

As provided by s. 212.02(1), F.S., the term "admissions" includes all dues and fees collected by private or membership clubs providing recreational facilities. Your request maintains that the dues and fees payments are for instructional classes.

Rule 12A-1.005(4)(d)2., F.A.C., provides, the following:

(d) Fees paid to private clubs or membership clubs that do not entitle the payor to the use of the club's recreational or physical fitness facilities are not subject to tax. Examples of such fees are:

2. Charges for professional instructions in any sport conducted at the club, so long

as such charges are **exclusively for the instructions and include the use of the facility only during the period of time the instructions are taking place.** It is not the intention of this rule to allow a club to exempt what is in effect a dues or membership fee by labeling such charges as instruction fees. (**Emphasis added**)

Rule 12A-1.005(4)(d), F.A.C., provides that certain charges are not considered taxable dues and fees. Rule 12A-1.005(4)(d)2., F.A.C., provides that charges for professional instructions in any sport conducted at a club are not dues and fees, so long as such charges are exclusively for the instructions and include the use of the facility only during the period that the instructions are taking place. The Rule provides that it is not the intention of the Rule to allow a club to exempt what are in effect dues or membership fees by labeling such charges as instruction fees. As with most instruction, once the member learns the sport for which instruction is provided, then it is presumed that the instruction will be completed. In other words, classes must be designed with a goal of completion by the member.

As required by the Rule, access to a club's facilities must only be allowed during the class times. Based on the proposed agreement language, the dues and fees paid pursuant to the agreements are not subject to the tax imposed by s. 212.04, F.S., because Rule 12A-1.005(4)(d)2., F.A.C., provisions are applicable. Taxpayer is still liable for the collection of sales tax, pursuant to the previous agreements, until the proposed agreements are executed.

This response constitutes a Technical Assistance Advisement under section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 10 days of the date of this letter.

Respectfully,

Chuck Wallace

Chuck Wallace
Technical Assistance & Dispute Resolution
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